



Commonwealth of Massachusetts State Ethics Commission

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CONFLICT OF INTEREST OPINION EC-COI-89-3

FACTS:

You are the Executive Director of the Group Insurance Commission (GIC), an eleven member state agency which administers the program for group life and health insurance for state, county and municipal employees pursuant to G.L. c. 32A and 32B. The GIC recently selected the John Hancock Mutual Life Insurance Company (Hancock) to serve as the plan administrator for the state's indemnity insurance plan under a competitively bid contract covering a five year period ending on June 30, 1993. The GIC will be conducting periodic evaluations of Hancock's performance as plan administrator during the contract period.

Under recently enacted legislation, St. 1988, c. 164, the GIC is required to conduct an actuarial evaluation of the state's obligations for post-retirement health and insurance benefits for retired state employees, under G.L. c. 32A. The GIC staff does not have the actuarial expertise to carry out this evaluation, which you estimate would cost at least \$30,000.00 if performed by an outside consultant. Hancock has volunteered to provide these valuation services to the GIC on a no-cost pro bono basis.

QUESTION:

Does G.L. c. 268A permit you to accept Hancock's offer to provide the actuarial evaluation services on a pro bono basis?

ANSWERS:

Yes, subject to certain conditions.

DISCUSSION:

The GIC is a state agency for G.L. c. 268A purposes, G.L. c. 32A, s.3, and its members and employees are state employees within the meaning of G.L. c. 268A, s.1(q). Two sections of G.L. c. 268A are relevant to your inquiry.

1. Section 3(b)

Under this section, no employee or member of the GIC may accept for himself anything of substantial value given for or because of any official act performed or to be performed. While Hancock's offer of consulting services to GIC would constitute

something of substantial value, {Commission Advisory No. 8}, the acceptance of the offer will not violate s.3(b) because the offer will be accepted for use by the agency, rather than for the personal use of an employee. This result is consistent with EC-COI-84-114, in which the Commission held that a gift of artwork donated for permanent exhibition in a government agency and not for the personal use of any employee does not violate s.3. See, also, EC-COI-87-23 (no violation where state employee insulates himself from any personal benefit attributable to a gift received for or because of acts performed as a state employee). While s.3 might be applied differently where gifts to a government agency also confer a personal benefit to individual employees (such as the donation of telephones for use in an employee's personal vehicle), the Hancock offer appears to confer a benefit solely to the GIC rather than to any employee personally.

2. Section 23

Under this section, a state employee may not use his official position to secure unwarranted privileges of substantial value for himself or others and must also avoid creating the appearance of undue favoritism. Issues under this section will arise for GIC members and employees in connection with their monitoring and evaluation of Hancock's performance as plan administrator. In its evaluation, the GIC may not grant to Hancock any unwarranted treatment and must keep independent the fact that Hancock is providing free consultant services. For example, questions under s.23 would arise if, without justification, the GIC overlooked Hancock's failure to perform its obligations under the plan administrator contract. As long as the GIC continues to monitor Hancock's performance under the same objective standards by which it monitors other contracts, the GIC will not violate s.23(b)(2). Further, to dispel any appearance of undue favoritism, the GIC should publicly disclose the fact that it has received free consulting services from Hancock in implementing St. 1988, c. 164.

Finally, s.23(c) requires GIC members and employees to abstain from disclosing to Hancock any confidential information, aside from materials which Hancock will need to carry out its actuarial evaluation work.

DATE AUTHORIZED: January 11, 1989

*Pursuant to G.L. c. 268B, s.3(g), the requesting person has consented to the publication of this opinion with identifying information.